

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**PHOENIX LICENSING, L.L.C. and LPL  
LICENSING, L.L.C.;**

**Plaintiffs,**

**v.**

**ALLSTATE CORPORATION, et al.;**

**Defendants.**

**Civil Action 2:2009-cv-00255-TJW**

**Jury Trial Demanded**

**AGREED MOTION TO STRIKE REFERENCES TO  
PLAINTIFFS' CONFIDENTIAL SETTLEMENT ANALYSIS**

Plaintiffs Phoenix Licensing, LLC and LPL Licensing, L.L.C.'s ("Plaintiffs") and Defendants Barclays Bank PLC and Barclays Bank Delaware (collectively, "Barclays") file this Agreed Motion to Strike References to Plaintiffs' Confidential Settlement Analysis. The parties jointly request that the Court (1) strike any references to Plaintiffs' confidential settlement analysis contained in Plaintiffs' Sur-reply to Barclays' Motion to Dismiss the Complaint ("Sur-reply") (Docket No. 139); and (2) not consider Plaintiffs' confidential settlement analysis or any references thereto in ruling on Barclays' Motion to Dismiss the Complaint ("Motion to Dismiss"), including in the decision whether to grant leave to amend.

On December 15, 2009, Plaintiffs filed their Sur-reply, which makes several references to a confidential settlement analysis provided to Barclays after Barclays filed its Motion to Dismiss on October 21, 2009. The confidential settlement analysis is described in the Sur-reply as including a "62-slide presentation," "three binders including . . .," and a "presentation detailing Plaintiffs' infringement theories . . . ." PLS.' SUR-REPLY, at 5, 6, 8. The parties have agreed, however, that the Court should not consider the confidential settlement analysis, including the

fact that Plaintiffs created it or provided it to Barclays, in making its decisions whether (1) to grant Barclays' Motion to Dismiss; and (2) to grant Phoenix leave to amend, should it grant Barclays' Motion to Dismiss. In particular, the parties agree that a plaintiff cannot satisfy Rule 8's pleading requirements by providing a defendant with a confidential settlement analysis. As a result, the parties jointly request that the Court strike any reference to the confidential settlement analysis contained in Plaintiffs' Sur-Reply (pages 5, 6, 8), and not consider the confidential settlement analysis or any references thereto in ruling on Barclays' Motion to Dismiss, including in the decision whether to grant leave to amend.

Dated: February 11, 2010

Respectfully submitted,

/s/ Sean A. Luner

Gregory Scott Dovel  
CA State Bar No. 135387  
Sean A. Luner  
CA State Bar No. 165443  
DOVEL & LUNER, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401  
Telephone: (310) 656-7066  
Facsimile: (310) 656-7069  
E-mail: [greg@dovellaw.com](mailto:greg@dovellaw.com)  
E-mail: [sean@dovellaw.com](mailto:sean@dovellaw.com)

S. Calvin Capshaw, III  
State Bar No. 03783900  
Elizabeth L. DeRieux  
State Bar No. 05770585  
D. Jeffrey Rambin  
State Bar No. 00791478  
CAPSHAW DERIEUX, LLP  
1127 Judson Road, Suite 220  
Longview, Texas 75601  
Telephone: (903) 236-9800  
Facsimile: (903) 236-8787  
E-mail: [ccapshaw@capshawlaw.com](mailto:ccapshaw@capshawlaw.com)  
E-mail: [ederieux@capshawlaw.com](mailto:ederieux@capshawlaw.com)  
E-mail: [jrambin@capshawlaw.com](mailto:jrambin@capshawlaw.com)

Attorneys for Plaintiffs,  
PHOENIX LICENSING, L.L.C. and  
LPL LICENSING, L.L.C.

/s/ Neil J. McNabnay

Thomas M. Melsheimer  
txm@fr.com  
Texas Bar No. 13922550  
Neil J. McNabnay  
njm@fr.com  
Texas Bar No. 24002583  
Tim K. Brown  
tkb@fr.com  
Texas Bar No. 24043575  
FISH & RICHARDSON P.C.  
1717 Main Street, Suite 5000  
Dallas, TX 75201  
(214) 747-5070 (Telephone)  
(214) 747-2091 (Facsimile)

Attorneys for Defendants  
BARCLAYS BANK PLC; and  
BARCLAYS BANK DELAWARE.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 11, 2010 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Neil J. McNabnay